

Arthur J. Liu (State Bar No. 196874)  
 INTER-PACIFIC LAW GROUP, INC.  
 1904 Franklin Street, Suite  
 Oakland, CA 94612  
 Tel.: (510) 986-1198  
 Fax: (510) 986-0889

John Gregory Downing (State Bar No. 157717)  
 DOWNING LAW FIRM  
 109 Geary Street, 4<sup>th</sup> Floor  
 San Francisco, CA 94108  
 Tel: (415) 986-3644  
 Fax: (415) 449-6047

Attorneys for Defendant  
 SHANGHAI GOURMET, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

BAO YI FANG, WEI WANG, and )  
 LIANG XIAN FU, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SHANGHAI GOURMET, LLC, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**Case No.: C07-04482 JL**

**OPPOSITION TO MOTION FOR  
 LEAVE TO FILE SECOND  
 AMENDED COMPLAINT**

Date: 9/3/08  
 Time: 9:30 a.m.  
 Dept: 16, Hon. James Larson

**1. Introduction**

On July 22, 2008, the Court denied the Motion for Leave to File the First Amended Complaint filed by Plaintiffs BAO YI YANG (“Yang”), WEI WANG (“Wang”) , LIANG XIAN FU (“Fu”) (collectively, “Plaintiffs”), to the extent it sought to add a claim pursuant to California Labor Code §2699. On August 1, 2008, a First Amended Complaint was filed in conformity with the Court’s Order. On August 2, 2008, Plaintiffs filed a Motion for Leave to File a Second Amended Complaint, which again includes a claim pursuant to Labor Code §2699. While the proposed Second Amended Complaint does not specifically seek damages on behalf of all current and former employees, nor is it limited to seeking to penalties related to Plaintiffs.

1 **2. Relevant Facts**

2 As referenced in the Shen Declaration, filed July 11, 2008, in opposition to the Motion  
3 for Leave to File the First Amended Complaint:

4 \* Defendant Shanghai Gourmet, LLC (“Defendant”), operated two (2) Chinese  
5 restaurants from 2000 to 2007. It now operates only one. (Shen Declaration in  
6 Opposition to Motion to Amend Complaint (“Decl”, ¶2)

7 \* It has thirty (30) former employees and twelve (12) current employees. The  
8 only three (3) employees to ever complain of any wage and hour problems are the  
9 Plaintiffs. (Decl, ¶3)

10 \* Defendant denies any wrongdoing, Plaintiffs were paid more than the applicable  
11 hourly wage for all work performed and received additional benefits such as  
12 housing, meals, a break between lunch and dinner, and transportation to and from  
13 work. (Decl, ¶4)

14 \* This litigation has already caused Defendant and its owners financial hardship,  
15 expanding the lawsuit to involve thirty-nine additional (39) employees and  
16 potential plaintiffs will cause even greater hardship on them. (Decl, ¶5)

17 **3. PAGA**

18 Labor Code §2699(a), provides, in pertinent part, that any provision of the Labor Code  
19 that:

20 .... that provides for a civil penalty to be assessed and collected by the Labor and  
21 Workforce Development Agency or any of its departments, divisions, commissions,  
22 boards, agencies, or employees, for a violation of this code, may, as an alternative, be  
23 recovered through a civil action brought by an aggrieved employee on behalf of himself  
24 or herself and other current or former employees pursuant to the procedures specified in  
25 Section 2699.3.

26 §2699.3 provides various administrative procedures required before Plaintiffs may seek relief on  
27 behalf of other current or former employees. Any penalties are paid “75% to the Labor and  
28 Workforce Development Agency ... and 25% to the aggrieved employees”. §2699(I)

1 In its proposed First Amended Complaint, Plaintiffs specifically sought damages on  
2 behalf of all current and former employees. *See* Proposed First Amended Complaint, attached to  
3 Motion for Leave to File First Amended Complaint, filed 5/17/08.

4 In Count Seven of its proposed Second Amended Complaint, Plaintiffs continue to seek  
5 damages pursuant to California Labor Code §§558 and 2699 on behalf of “employees”. It is not  
6 in anyway limited to Plaintiffs and given the language of Labor Code §2699, the only reasonable  
7 inference is that it seeks damages on behalf of current and former employees.

#### 8 **4. Leave to Amend Should be Denied**

9 While leave to amend is liberally granted, it remains the moving party’s burden to give a  
10 reason why justice requires leave to amend. *Shipner v. Eastern Airlines, Inc.*, 868 F.2d 401,406-  
11 406. If the moving party meets that burden, then the opposing party may make a showing that  
12 leave to amend should not be granted because of prejudice to the opposing party, bad faith by the  
13 moving party, or futility of amendment. *Bowles v. Reade*, 198 F.3rd 752,758 (9<sup>th</sup> Cir. 1999)  
14 Prejudice can be established where the proposed new claims greatly change the nature of the  
15 litigation or the potential claims are futile. *Morongo Band of Indians v. Rose*, 893 F.2d 1074 (9<sup>th</sup>  
16 Cir. 1990)(“amending complaint to allege claims under RICO greatly changed the nature of the  
17 litigation and justified denial of leave to amend”)

18 In the present case, Plaintiffs have submitted a proposed Second Amended Complaint  
19 which is in apparent violation of the Court’s July 22<sup>nd</sup> Order. Moreover, they have again failed to  
20 establish why this amendment is being sought now.

#### 21 **5. Conclusion**

22 For the reasons stated above, Defendant requests that Plaintiffs be denied leave to amend,  
23 at least with respect to Count 7, the PAGA Claim.

1 Dated: August 22, 2008

INTER-PACIFIC LAW GROUP INC. &  
2 DOWNING LAW FIRM

3  
4 By: \_\_\_\_\_/s/\_\_\_\_\_

5 ARTHUR J. LIU, Attorneys for  
6 Defendant SHANGHAI GOURMET, LLC  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27